

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 00-50818  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

HUMBERTO RIOS-RIOS,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. DR-00-CR-192-1-WWJ  
- - - - -

April 12, 2001

Before JOLLY, HIGGINBOTHAM, and JONES, Circuit Judges.

PER CURIAM:\*

Humberto Rios-Rios appeals his sentence following his guilty plea conviction for illegal re-entry after deportation in violation of 8 U.S.C. § 1326. Rios argues that his sentence should not have exceeded the two-year maximum sentence under 8 U.S.C. § 1326(a). Rios acknowledges that his argument is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224 (1998), but he seeks to preserve the issue for Supreme Court review in light of Apprendi v. New Jersey, 120 S. Ct. 2348 (2000).

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Apprendi did not overrule Almendarez-Torres. See Apprendi, 120 S. Ct. at 2362; United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000), cert. denied, 121 S. Ct. 1214 (2001). Rios' argument is foreclosed by Almendarez-Torres, 523 U.S. at 235.

The Government has moved for a summary affirmance in lieu of filing an appellee's brief. In its motion, the Government asks that the judgment of the district court be affirmed and that an appellee's brief not be required. The motion is granted.

AFFIRMED; MOTION GRANTED.